

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)
)
Confidential Treatment of)
Wire Center Line Count Data)

CC Docket No. 96-43
(DA 00-1068)

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COMMENTS OF ANCHORAGE TELEPHONE UTILITY

Anchorage Telephone Utility (ATU) is the incumbent local exchange carrier (ILEC) in the most competitive local market in the country. ATU already has lost approximately a quarter of the market to its facilities-based competitor, General Communications, Inc. (GCI).¹ In addition, several other companies have applied for or have received state certifications to provide facilities-based local service in ATU's service area. ATU will be placed at a significant competitive disadvantage if GCI and other competitors are provided access to ATU's working loop count at the wire center level, especially since ATU's competitors are not required to disclose similar information to ATU. ATU urges the Commission to protect the competitive sensitivity of this information by withholding it from public disclosure, as required by the Freedom of Information Act (FOIA).²

I. FOIA PROHIBITS THE PUBLIC DISCLOSURE OF LINE COUNT DATA

Exemption 4 of FOIA shields from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."³ There can be no doubt that line count data is commercial information that falls within the first element of Exemption 4. The

¹ In addition, ATU has lost a substantial share of the market to AT&T Alascom, which provides local services in Anchorage by reselling ATU's services.

² 5 U.S.C. § 552(b)(4).

³ *Id.*; See *Washington Post Co. v. U.S. Dep't of Health and Human Servs.*, 690 F.2d 252, 266 (D.C. Cir. 1982).

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term “commercial” in Exemption 4 must be given its ordinary meaning.⁴ Data concerning the number of working loops of an ILEC relate directly to the income producing aspects of the business and reveal a great deal of information about basic commercial operations and customer locations. ILEC competitors would be able to use this data to determine, among other things, the level of relative market shares that the ILEC has and even the particular customers that the ILEC serves. This data is exactly the type of information that the courts have held fall within the ambit of commercial information under Exemption 4.⁵

The data concerning wire center line counts is obtained from independent companies, like ATU, and therefore, it is clearly obtained from a person outside the government.⁶ Thus, it satisfies the second element under Exemption 4 of the FOIA.

Finally, Exemption 4 protects commercial information that is confidential. Commercial information is confidential if it is not the type of information that is released to the public and disclosure of that information would cause substantial harm to the competitive position of the person from whom the information was obtained. *National Park and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

The first element of the *National Park* test for confidentiality is clearly met with respect to ATU because the data concerning the number of working loops per wire center is not made available to the public. ATU is not required to submit information about the number of working loops per wire center to the Regulatory Commission of Alaska or to any other governmental

⁴ *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983).

⁵ *E.g., Sterling Drug Co. v. FTC*, 450 F.2d 698, 709 (D.C. Cir. 1971) (quoting S. Rep. No. 89-813, at 9 (1965)) (commercial information includes business sales statistics, inventories, customer lists, and manufacturing process).

⁶ *Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403-04 (D.C. Cir. 1980).

entity. ATU submits this information only to the National Exchange Carriers Association, as required under Section 36.111(h) of the Commission's rules.⁷ Each time ATU has submitted this information, moreover, ATU has requested confidential treatment because of the highly competitively sensitive nature of this information.⁸

The second element of the *National Park* test – harm to the competitive position of the party furnishing the data – is also present. In order to meet this element, a party need not show “actual” competitive harm.⁹ Instead, the party need only submit evidence revealing “actual competition and the likelihood of substantial competitive injury . . . to bring commercial information within the realm of confidentiality.”¹⁰

Regardless of what may be happening in the rest of the country, the local market in Anchorage is characterized by intense competition. Two major competitive local exchange carriers – AT&T Alascom and GCI – provide local exchange and exchange access service throughout Anchorage. ATU has entered into interconnection agreements pursuant to Section 251 of the Communications Act with both GCI and AT&T. GCI has developed its own network and is marketing and offering facilities-based local exchange service in Anchorage. AT&T Alascom also is providing local exchange service in Anchorage on a resale basis. There can be no question that ATU currently is subject to actual competition with GCI and AT&T in the provision of local exchange and exchange access services.

⁷ 47 C.F.R. § 36.111(h).

⁸ See, e.g., Common Carrier Bureau Seeks Comment on Requests for Confidential Treatment of Wire Center Line Count Data, CC Dkt. 96-45, DA 00-1068, at 1 n.2 (rel. May 12, 2000).

⁹ See *Public Citizen Health Research Group*, 704 F.2d at 1291.

¹⁰ *Id.* (quoting *Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

The disclosure of ATU's line count information could be used by GCI and AT&T specifically to gain an unfair competitive advantage over ATU in the local market. With this information, GCI and AT&T would be able to identify ATU's market share compared with own market share. This information would unfairly aid ATU's competitors in determining how well they are marketing their products. If their working loops are more or less than ATU's, they can modify their marketing techniques to garner more customers. Line count information provided on a wire center basis also facilitates competitors' planning and investment in plant, by central office, by highlighting the volume of customers served from that office. It provides market sensitive information since, where the majority of facilities are, so are the customers. Moreover, because ATU has no way of knowing the number of working loops that its competitors have in place, disclosing ATU's line count data would unfairly tilt the competitive landscape in Anchorage in favor of ATU's competitors. Thus, the harm to ATU's competitive position if this information is disclosed is substantial. Exemption 4 of FOIA requires that confidential treatment of this information be maintained.

II. THE COMPETITIVE HARM THAT WOULD BE CAUSED BY DISCLOSING LINE COUNT DATA ON A WIRE CENTER LEVEL IS NOT OUTWEIGHED BY ANY PUBLIC BENEFIT

The Commission already has determined that it will disclose the line count data of non-rural carriers receiving universal service support.¹¹ The Commission reasoned that the disclosure was necessary to preserve the goal of targeting support to high-cost wire centers and to ensure the portability of universal service support.¹² These interests are not present in the case of carriers, like ATU, who do not receive high-cost universal service support for their wire centers.

¹¹ *Federal-State Joint Board on Universal Service*, Order, CC Dkt. 96-45, FCC 00-125 (rel. Apr. 7, 2000).

¹² *Id.* at ¶¶ 13, 17.

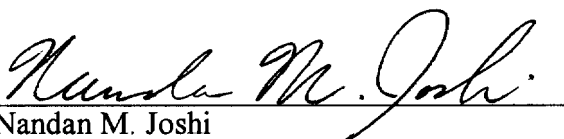
No other public interest benefit has been identified in the case of carriers that do not receive support that would outweigh the significant competitive harm that would arise if the number of working loops were made available at the wire center level.¹³ The Commission has identified no policy goal that would be undermined if the number of working loops per wire center were kept confidential. Moreover, any public interest benefit to disclosure of this information could be fulfilled by releasing aggregated or averaged line count data at a study area or statewide level. This data, for which ATU has not sought confidential treatment, does not present the degree of competitive harm that line count data at the wire center level would pose.

III. CONCLUSION

For the foregoing reasons, information about the number of working loops at the wire center level that the Commission obtains under Section 36.611(h) from non-rural ILECs that do not receive high-cost support should be treated as confidential under Exemption 4 of FOIA.

Dated: June 26, 2000

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¹³ Indeed, the goal of competitive neutrality that the Commission advanced in its order denying confidential treatment of line count data for ILECs receiving high-cost support would be undermined if the Commission allowed the line count data of ILECs that do not receive support to be disclosed to their competitors without enabling ILECs to obtain similar information from their competitors.